• Currently at one of our homes we have four individuals who ratios are 1:1, 1:3, 1:3, and 1:3. Therefore we staff it with 2 employees equal to required ratios. We have one other individual who is beginning a transition to residential services. This transition currently means this person comes one day a week from 10 am to 6 pm and is a 1:3 ratio. Therefore, on the day he is here with us, our staff ratio requirement would be 2:33. Do we have to add another staff during these 8 hours or can we serve them with 2 staff.

Since this is a regularly scheduled Residential Habilitation setting for this Participant you would need to have an additional staff during this time to meet your current staffing ratios. Based on the current bulletin, we are not considering averages to look at the overall staffing needs. We are considering each Participant's level of support and the amount of staff needed to make sure that all Participants in the environment have the level of support they are being reimbursed for and that their plan of care states is appropriate.

• I was approached by a participant who was upset that with the new ratio rule he was not able to go outside during day habilitation for a walk to play basketball because the person he was paired up with did not go out.

Agencies are still responsible for providing opportunity to the participants to have activities and go into the community as their schedules and services in their plan dictate. Providers <u>cannot</u> <u>use</u> the staffing ratio as a reason to not do this. If you are approached by a participant again, I would encourage them to go to their Case Manager and voice their concern. The Case Manager is responsible for advocating for them to receive the services and opportunities that they would like to have. Agencies are responsible for providing Habilitation services in order to meet the current service requirements for which they are billing.

• We have a residential home with 5 people, all of whom are on a 1:4 ratio. We have always single staffed this home. All of them are fairly independent. They do require some assistance but it is minimal and they all have alone time both in the community and at home on their plans.

There is no flexibility regarding the staff memo. A second staff would need to be added during waking hours or during hours when all individuals are home in order to meet the staffing needs of the participants and to ensure that services are provided for which you are being reimbursed. If the participants are fairly independent and can have low to no supervision, there are other services on the waiver that may better fit their assessed needs.

The case manager(s) for these individuals should work with the person and the team to determine the least restrictive, most appropriate, integrated and independent living arrangement in which the participant(s) can live and look at the possibility of transitioning to a different setting with the independence and support still available or look at transitioning the home to a supported living structure instead of residential habilitation.

• The bulletin states that ratios must be followed during all waking hours. Since adults with ID/DD do not have bed times, awake and sleep hours vary from one person to another. Can there be some flexibility to this if some of the individuals go to bed earlier than others or do ratios have to be maintained for the entire home until all residents are asleep? Also, is "waking hours" meant literally, until everyone is asleep or can it be interpreted as after they have retired to their rooms even though they may be watching TV or doing other activities alone in their bedrooms?

The staffing bulletin states that there can be flexibility during sleeping hours. You are encouraged to cover this in your policies and procedures as well as your organization's Client Handbook. Usually there is some time when everyone is settled in their rooms and getting ready for bed. We expect that adults that are receiving waiver services would have adult bedtimes and

expect that organizations will identify this and schedule staffing appropriately based upon each locations unique routines and needs.

• What is the ratio requirement, if any, for 15 minute Day Habilitation units?

Even if you are billing with a 15 minute unit, the expectation would be that you would be providing the level of care that is appropriate for each participant. For example, if a participant needs 1:1 then even under the 15 minute unit, you would still be expected to provide that level of support.

• We have approximately 20 participants who eat lunch from 12:00 to 12:30 pm. For the most part, their staffing ratios are 1:4. Are we out of compliance with ratios if we do not have 5 staff with them during their lunch time?

Yes, you will need to have 5 staff (or more), especially since mealtimes are often peak activity and monitoring times when people need extra support, assistance, personal care, etc. When a couple of people want to go to lunch at a restaurant, there needs to be sufficient staff to fulfill these plans as well. Understaffing a highly populated location at a peak activity time can lead to serious health, safety, and community access issues.

• Is it permissible for us to not fill a half staff "vacancy" in a service location, for example, with eight (8) participants? This .50 staff figure is not by individual participant but rather by all combined participants in that service area. This .50 staff member split by eight participants becomes only .06 per participant or 3.6 minutes of service per hour. Of course, sometimes this figure is .25 or .33 of a staff member in a service area.

We try to review each question and then look at the intent of the Bulletin. Based on the staffing bulletin, we are not considering averages to look at the overall staffing needs.

We are considering each Participant's level of support and what is needed to make sure that all Participants in the environment have the level of support they are being reimbursed for and that their plan of care states is appropriate, especially as support and supervision needs change during various parts of a person's day, routine, health, etc. Rounding up or down and considering the need for half a staff person is not something that will work when dealing with people. We are expecting that each person's staffing ratio and the level of reimbursement that corresponds to that ratio is what will be used to determine how many staff are needed for each area.

What if a person does not need the level of support that their ICAP score indicates?

Providers can ask to be reimbursed at a lower rate to allow a lower staffing level, if this appropriate for the Participant or they can provide the level of support that is indicated on the approved plan for the participant. Refer to the Provider Bulletin in regards to the expectations of staffing and the ratios.

How do we meet the emergency component of the staffing bulletin?

Providers should have emergency policies in place that meet the directives in the memo. It is also encouraged that Providers have Risk Management plans in place and that their policies are supported by their risk management plan. If your local Emergency Response Unit will not provide assessment, then fall back on your risk management plan and have policies that would support your ability to allow for a safe evacuation or care for participants during sleeping hours.

If a participant has alone time written into their plan of care, is this "alone time" now to be taken away to meet the policy of the bulletin?

The bulletin's intent was not to take away independence from any participant. If a participant has a certain amount of alone time **written** into his or her plan of care and all other

levels of support in the plan of care indicate that this would be appropriate for the participant, then staffing does not have to increase or replace a person's alone time. However, if it becomes clear that this level of support does not meet the participant's needs, refer to requirements of the staffing bulletin.

Can a provider be out of ratio to take some participants to community outings, such as swimming, movies, etc?

The Division is encouraging organizations to look to their staffing policies to allow how they will still allow for community access and fulfilling the habilitation schedules of the participants. Providers are encouraged to re-read the service definitions of Residential Habilitation and Day Habilitation and remember that community integration is part of those services. A provider, who is operating under a Home and Community based waiver program shall provide the service for which they are billing. If the service is not accurately provided and supported with documentation, then the provider is subject to the monitoring and recovery practices through Medicaid. The expectation is that schedules shall be individualized according to the Division's rules and preferred activities should be reflected on the schedules. These activities should be occurring for this person according to the plan of care, schedules approved by the team, and adhering to the service definitions.

Integration is a key component of home and community based services. The issue of integration has been a consistent topic at the national level with the Department of Justice, Senate Committee on Health, Employment, Labor, and Pensions, and within the Centers for Medicaid and Medicare Services (CMS). Here is some clarification released from the Department of Justice on "Integration".

What is the most integrated setting under the ADA and Olmstead?

The "most integrated setting" is defined as "a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible." Integrated settings are located in mainstream society; offer access to community activities and opportunities at times, frequencies and with persons of an individual's choosing; afford individuals choice in their daily life activities; and, provide individuals with disabilities the opportunity to interact with non-disabled persons to the fullest extent possible.

Also, in recent testimony before the Senate Committee on Health, Education, Labor & Pensions (HELP Committee), Assistant Attorney General Thomas Perez of the Department of Justice's (DOJ's) Civil Rights Division points out, "The Division has expanded its Olmstead work to look beyond just where people live to examine how people live and spend their days," arguing that "simply moving someone from an institution to a community-based residence does not achieve community integration under Olmstead if that person is still denied meaningful integrated ways to spend their day and is denied the opportunity to do what so many people do – pursue competitive employment in the community."